IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1979 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHANTILAL VELJIBHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MR CL SONI for Petitioner(s) : 1,
Me S P Hasurkar, Asstt.GOVERNMENT PLEADER for Respondent(s) : 1 - 3.
==========

CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 12/01/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

When this matter was called out for final hearing, Mr Hasurkar, learned AGP has drawn our attention to para 2 of the affidavit-in-sur-

rejoinder, wherein it is stated that "in the year 1983, the land was acquired". According to him, this statement is incorrect and the year is 1977. He is accordingly permitted to carry out the necessary correction.

In this petition, the petitioner has challenged the decision of the respondents dated 21/31.5.2002 which is to the effect that the land that was acquired from the petitioner will be returned to him on re-grant basis by charging from him the prevailing market price of such land. According to the petitioner, he has 3 hectares 90 Are, 52 Guntas of agricultural land bearing survey no.193 PK.

2. The said land was required to be acquired for the purpose of implementing a public purpose namely; irrigation project - Venu-2. Respondent no.2 initiated the proceedings under the Land Acquisition Act (hereinafter referred to as "the Act") and at the end of the said proceedings ultimately declared the award in the year 1977. Since, according to the petitioner, the rate of compensation determined by the Land Acquisition Officer was not adequate, he made application under section 18 of the Act requesting the Collector to make reference to the District Court for enhancement of the compensation. In view of the same ultimately, the reference case No.10/79 was registered. However, during the pendency of the said case, the petitioner was intimated by the Dy.Engineer, Upleta vide letter no.17.11.1980 that the petitioner's land which was acquired for Venu-2 project, was no longer required by the

Government and the Government intended to return the same to him. It was also intimated that if the petitioner was willing to take back the lands, he should give consent in writing in the prescribed form in four copies. In view of the same, the petitioner, by consent dated 17.11.1980, agreed to take back the land and to return the amount of compensation received by him by yearly installment of Rs. 1500/-. It appears that since the reference case was pending in the District Court at Gondal, the Executive Engineer, Project Construction Division No.III, Rajkot, vide his communication addressed to the Asstt.Government Pleader dated 28.11.1983 intimated him that the Government has decided to return the land in question to the persons named in the said letter including the petitioner and the necessary orders were received in the revenue department that after recovering back the amount of compensation paid to the petitioner's land to be returned to those persons. It further appears that pursuant to the said decision of the Government and also the intimation given to the Asstt.Government Pleader, the petitioner submitted a pursis to the learned Judge namely the 2nd Joint Assistant Judge, Gondal requesting him to permit the petitioner to withdraw the reference case and pursuant to the said request, the learned Judge, by his order dated 7.12.1983, permitted the petitioner to withdraw the reference case.

3. It further appears that in spite of the aforesaid decision that was taken by the Government way back in the year 1980, no steps to return the land to the petitioner were taken for a considerable period. It is the say of the petitioner that he had been making oral representations to the respondents to return the land, but the land was not returned to him. Hence he was constrained to serve a legal notice on the Government through the Chief Secretary, Gandhinagar. The said notice is dated 26.8.1994. This notice was never replied to by the Government. Again on 27.4.1998, another notice was given through his Advocate requesting the respondents to re-grant the land to the petitioner and thereafter, on 12.7.1999, another written consent was also given by the petitioner. It was only on 21/31.5.2002, the petitioner was intimated the decision of the Government to the effect that the Government was willing to re-grant the land by charging prevalent market price. It was also stated that the said decision to re-grant the land at the prevailing market rate, was taken in view of the circular issued by the revenue department on 31.8.2001. It is the grievance of the petitioner that when the decision was taken in the year 1980 to return the land to the petitioner, the respondents were not entitled to charge at the prevailing market price of such land as on 21/31.5.2002. The petitioner has, therefore, prayed that the respondents be directed to act upon the decision that was taken in the year, 1980 and

not on the basis of the intimation dated 21/31.5.2002.

4. We have carefully considered the contentions raised in the petition as well as the documents annexed thereto as also the replies filed by the respondents. We have heard Mr C L Soni, learned Advocate for the petitioner and Mr S P Hasurkar, learned AGP for the respondents. It is an admitted position that the agricultural lands of the petitioner was acquired for implementing the irrigation project named Venu-2. The land was acquired in the year 1977. But it appears that on completion of the project or while the same was in progress, the Government felt that the land in question was not required for implementing the project and it decided to return the same to the petitioner and accordingly on 17.11.1980, intimation in writing was given to the petitioners. It is also an admitted position that pursuant to the said intimation the petitioner, without any delay, furnished his consent in the requisite form on that very day i.e, on 17.11.1980. That shows the anxiety on the part of the petitioner to have the land back. It is also an admitted fact that after the award was declared and the land was acquired, the petitioner had approached the Reference Court under section 18 of the Act for enhancement of the compensation and in view of the same, the concerned AGP was intimated by the Executive Engineer of respondent by letter dated 20.11.1983 about the decision of the Government to return the land

to the petitioner. It is also an admitted fact that in view of the said decision, the petitioner had submitted a pursis to withdraw the reference case pending in the court of the 2nd Joint Assistant Judge at Gondal and the learned Judge, by order dated 7.12.1983, permitted withdrawal of the reference case. It is also not denied by the respondents that a notice was served by the petitioner on 26.8.1994 asking the Government to return the land to the petitioner. It is stated that the said notice was never replied. Hence another notice in the form of a letter dated 27.4.1988 was addressed to the Dy.Collector, Gondal city to re-grant the land to the petitioner. Even thereafter for four years, no decision was taken by the respondents and it was only in the month of May, 2002 intimation was given to the Dy.Town Planner to the effect that decision to re-grant the land to the petitioner had been taken and since the re-grant was to be made by charging prevailing market price, the Town Planning Officer was asked to carry out the necessary exercise and to ascertain the prevailing market value of the land in question. It is the say of the petitioner that he has come to know about such decision which, in his submission, is not just and proper. According to the learned Advocate Mr Soni for the petitioner when the decision to return the land was taken in the year 1980 and when the respondents have nowhere explained why the said decision was not implemented till 2002, now they cannot ask the petitioner to pay the

prevailing market value as of May, 2002. As against that Mr Hasurkar has submitted that the decision to re-grant the land on the basis of the prevailing market value has been taken in view of the circular dated 31.8.2001 issued by the Revenue Department in the wake of an anomaly that is being created while returning the land acquired by the Government to the original owner in cases where it was no more required for public purpose for which it was acquired.

5. The facts stated above clearly show that when everything was finalised in the year 1980 and the decision to return the land to the petitioner was taken on 17.11.1980, there was no reason for the respondents not to act upon the decision to return the land to the petitioner by recovering the amount paid by way of compensation. It is to be noted here that when the Government itself found that there was no meaning in retaining the land and it should be returned to the petitioner, such exercise ought to have been carried out without any delay. The petitioner was willing to pay back the amount received by way of compensation as suggested by the respondents. However, for 14 long years they did not take any steps and the petitioner was constrained to serve them with notice. Even the notice of the petitioner did not have any desired effect. Not only that, but the notice was never replied to by the respondents. Since the said notice was not replied, the petitioner was

again constrained to give another notice in the form of a letter dated 27.4.1998 addressed to the Dy.Collector. It appears that while requesting the Dy.Collector, the word 're-grant' has been used by the Advocate who gave the said notice. The say of the respondents is that since the request to re-grant the land was made only in the month of April, 1998 the decision to re-grant the land by charging prevailing market price of May, 2002 was taken. While taking the decision, circular dated 31.8.2001 was kept in view. It is the submission of Mr Hasurkar that for the first time, request to re-grant the land has been made in the year 1998. This submission is based on the averments made in para 4 of the affidavit-in-reply which is essentially made for explaining the delay. According to the respondents, for the first time, the proposal to re-grant the land was given in the year 1999. This submission of Mr Hasurkar cannot be accepted since it was the Government's decision to return the land and the decision was taken way back in November, 1980. Whatever the requirement that was suggested by the Government was fulfilled by the petitioner. The Government ought not to have delayed the implementation of the decision for unduly long period. According to Mr Hasurkar, the possession of the land remained with the petitioner and he was cultivating it and therefore, even if there was delay, it has not caused any prejudice to the petitioner. This submission cannot be accepted. It is an admitted fact that because of

the decision of the Government to return the land, the petitioner had withdrawn the reference case that was filed for seeking enhanced compensation. It may also be noted that in the year 1994, legal notices were given calling upon the Government to act upon its decision. Thereafter another letter dated 27.4.1998 was given. In view of these glaring facts, it is not possible for us to come to the conclusion that for the first time, the request to re-grant the land was made in the year 1999. Merely because in the letter dated 27.4.1998 the word 're-grant' is used, it does not mean that the petitioner, for the first time, made the request to re-grant the land to him in April, 1998. When the Government had decided to return the land in November, 1980, nothing prevented them from acting upon its decision expeditiously. The affidavit does not disclose why no action has been taken for almost 20 long years. Had the Government acted upon its decision expeditiously or within a reasonable time, the petitioner could not have been placed into such predicament and he could not have been asked to pay market price of May 2002 which obviously would be much higher than the market price of 1980-1981. In fact, the petitioner put himself in a disadvantageous position by withdrawing the reference cases on account of the promises extended to him by the Government of returning the land upon the petitioner returning the compensation amount. The Government is, therefore,

estopped from backing out from its original decision. It is true that regulation 328 of the Land Acquisition Manual states that if the land has to be returned, then in such case, it could be done either charging the compensation amount or the prevailing market price whichever was higher. But even if the Government had acted upon its decision in the year 1980 or 1981 and had asked the petitioner to pay the then prevailing market price, the petitioner would have readily paid the same because within 3 to 4 years the market price would not have been much higher than the rate of compensation determined by the Land Acquisition Officer. It is however, highly unfair on the part of the Government to say that since the request of re-grant has been made in 1998, it would charge the market price prevailing in the month of May, 2002. The petitioner had been clammering since the date on which decision to return the land was intimated to him, but in vain. There is no explanation, let apart any plausible explanation submitted by the Government why the said decision was not acted upon for almost over 20 years. In view of the same, it clearly appears that it is highly unfair on the part of the Government to insist upon charging the market price prevailing on 31.5.2002. We, therefore, decide that such decision is absolutely arbitrary and high-handed and it is required to be quashed and set aside and it is ordered to be quashed and set aside. We further direct that now the Government

may return the land to the petitioner in accordance with its decision taken in November, 1980 as contained in Annexure'A' which is the copy of letter dated 17.11.1980 with slight modification, it will return the land to the petitioner in accordance with Regulation 328 by charging market rate as prevailing in November, 1980 or on the basis of the rate of compensation decided by the Land Acquisition Officer whichever is higher. The process will be completed as expeditiously as possible and in any case not later than 31.3.2006.

With this direction, this petition is allowed. Rule is made absolute accordingly with no order as to costs.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp